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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Supervalu Inc.**

Serial Nos. 75/367,250; 75/367,274;
75/367,251 and 75/367,273.

Jamie Nafziger of Dorsey & Whitney LLP for **Supervalu Inc.**

Katherine Stoides, Trademark Examining Attorney, Law Office
109 (Ronald Sussman, Managing Attorney)

Before Seeherman, Hohein and Bucher, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Supervalu Inc. has filed four applications to register
the mark PREFERRED BASICS, as follows:

Application Serial No. 75/367,250 for
home furnishings, namely, pillows,
decorator pillows, chair pads and
laundry hampers; window coverings,
namely, toppers, shades, blinds and
curtain rods (Class 20);

Application Serial No. 75/367,274 for
bathroom scales;

Application Serial No. 75/367,251 for
bath products, namely, drinking

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glasses, soap dishes, tooth brush holders, waste baskets, toilet brushes, and tissue box holders (Class 21); and

Application Serial No. 75/367,273 for domestic articles, namely, bed sheets, blankets, comforters, mattress pads, and mattress protective covers; bath products, namely, towels, shower curtains; kitchen textiles, namely, tablecloths, dish towels, dish cloths, placemats, pot holders, napkins; home furnishings, namely, unfitted fabric furniture covers (Class 24); and bath rugs and area rugs (Class 27).

Each of the applications was filed on October 2, 1997, and each was based on applicant's asserted bona fide intention to use the mark in commerce.

For each application the Examining Attorney made final a requirement that applicant disclaim exclusive rights to the word BASICS, which she asserts is merely descriptive of the various goods. Applicant has filed appeals in each application from the requirement that BASICS be disclaimed.

Each appeal was fully briefed, although no oral hearings were requested.

Because the appeals all involve the same issue, namely, whether the requirement for a disclaimer of BASICS is proper, we will decide them in a single opinion. However, because the evidence in each file is not identical, and because the determination of whether the word BASICS is merely descriptive depends on the particular

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record as well as the particular goods identified in each application, we will analyze this question with respect to each application separately.

Before turning to the central question in these appeals, we note that the Examining Attorney has raised certain evidentiary objections. The Examining Attorney has objected to the third-party registrations submitted by applicant in all four applications, stating that they were not in proper form and/or were submitted untimely. Neither of these objections is well taken.¹ It is well established that, to make registrations of record, an applicant may submit soft copies of the registrations themselves, or the electronic equivalent thereof, i.e., printouts of the registrations taken from the electronic records of the U.S. Patent and Trademark Office's own database. **In re Smith and Mehaffey**, 31 USPQ2d 1531 (TTAB 1994). Applicant submitted printouts of registrations taken from the USPTO's on-line database. The Examining Attorney has not provided

¹ It is noted that a cover page to the third-party registrations submitted by applicant as Exhibit A with its request for reconsideration in Application Serial No 75/367,273 lists, in addition to the copies of the five registrations which were made of record with the request for reconsideration, ten other third-party registrations. Applicant has not relied on nor discussed those registrations, and we assume that it did not intend to make them of record; in any event, we confirm that the listing was insufficient to make them of record, and they were not considered in connection with the appeal of Application Serial No. 75/367,273.

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any reason why such printouts would be considered unacceptable. Applicant speculates that it may be because the cases allowing printouts of registrations from the USPTO's electronic records were decided before the USPTO made its database available on-line. If that is indeed the basis for the Examining Attorney's objection, we find it to be without merit. The on-line database, just like the other electronic databases, is part of the USPTO records. Although certain information in the on-line database may not be updated as quickly as other USPTO electronic databases, it is appropriate for us to take judicial notice of any change in status, in the same manner in which the Board takes judicial notice of changes of status of registrations between the time they are submitted and the time a decision is rendered.

As for the Examining Attorney's objection that certain of the third-party registrations were not timely submitted, a review of the files shows that, at the latest, all the registrations were made of record with requests for reconsideration, and the Board remanded the applications to the Examining Attorney to consider the requests for

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reconsideration, including any evidence submitted therewith. Therefore, the submissions were timely.²

This brings us to the substantive issue in each appeal, namely, whether the term BASICS in the mark PREFERRED BASICS is merely descriptive of the identified goods and must be disclaimed.

There are certain principles, as set forth in the statute and the case law, which guide each determination. Section 6 of the Trademark Act provides that the Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. Section 2(e)(1) prohibits the registration of a mark which, when used on or in connection with the goods of the applicant, is merely descriptive of them. A term is merely descriptive if, as applied to the goods or services in question, it describes an ingredient, quality, characteristic, function, feature, composition, purpose, attribute, use, etc., of such goods or services. Moreover, the question of whether a particular term is merely descriptive must be determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in

² Ironically, the Examining Attorney untimely submitted with her briefs copies of search strategies. These documents have not been considered.

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which the mark is used, and the significance that the mark is likely to have, because of the manner in which it is used, to the average purchaser as he encounters goods bearing the mark in the marketplace. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986). A suggestive mark, on the other hand, is registrable without evidence of acquired distinctiveness. "Whether a given mark is suggestive or merely descriptive depends on whether the mark 'immediately conveys...knowledge of the ingredients, qualities, or characteristics of the goods with which it is used,' or whether 'imagination, thought, or perception is required to reach a conclusion on the nature of the goods.'" **In re Gyulay**, 821 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987). It has been recognized that there is but a thin line of distinction between a suggestive and a merely descriptive term, and it is often difficult to determine when a term moves from the realm of suggestiveness into the sphere of impermissible descriptiveness. **In re Recovery, Inc.**, 196 USPQ 830 (TTAB 1977).

Application Serial No. 75/367,250

This application identifies the goods as pillows, decorator pillows, chair pads, laundry hampers, toppers, shades, blinds and curtain rods. The Examining Attorney has made of record in this application a dictionary

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definition of "basic" as meaning "of, being, or serving as a starting point or basis: *a basic course in Russian; a set of basic woodworking tools.*"³ In addition, she has submitted part of the Fall 1998 Chambers catalog showing a box entitled HOTEL BASICS above the copy:

The best hotels know that luxury begins with the basics: crisp, high-thread-count sheets, feather-soft pillows, the fluffiest towels and warmest duvets. For those who dream of enjoying the same comforts at home, Chambers is pleased to offer the Hotel Basics collection for bed and bath. On these pages, we present the very finest in hotel bedcovers, toweling and furnishings--items of exceptional quality and durability from the linen houses and artisans who supply to luxury hotels the world over.

The Examining Attorney has also submitted certain materials downloaded from the Internet, specifically a site/advertisement for a store called COUNTRY BASICS which describes itself as "a lil' country shop that sells throw blankets, handmade candles, and country crafts"; and an "under construction" website for Strouds, which has a listing of various "topics," including "home, fashion bedding, bath, basic bedding, tabletop and Rvsale," [sic] and which displays a "comforter & baffled fiberbed," a

³ The American Heritage Dictionary of the English Language, 3d ed. © 1992.

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magnetic pillow enhancer, a baffled box featherbed, down comforters, and a mattress pad.⁴

Finally, the Examining Attorney has submitted two third-party registrations. The first is for the mark BULLDOG BASICS, with the word BASICS disclaimed, for a wide variety of goods, including duffel bags, beach towels, T-shirts, plush toys, and toy model trucks, and for mail order catalog services featuring, inter alia, clothing, cups, bibs, luggage, hats, watches, mugs, knives, cigarette lighters, hood ornaments, desk sets, flags, blankets, beach towels, golf towels, golf balls and toy model trucks.⁵ The second, for BASIC BODY PLUS, with BASIC BODY disclaimed, is for bath and body accessories which include body brushes, body sponges, soap dishes and dispensers; hair brushes and combs; and portable travel containers.⁶

⁴ The Examining Attorney also submitted a page from a YAHOO! Search for the word "basics" which displays site matches 67-86 of 2380. The Examining Attorney has highlighted a listing which states, in its entirety, "Down to Basics--down comforters, pillows, linens, accessories, and custom work, featuring the unique patented design of our diagon comforter." There is so little information provided in this listing by Yahoo that it is relatively useless as evidence of anything, much less evidence of descriptiveness of the word "basics." We cannot even determine whether "Down to Basics" is the name of a company.

⁵ Registration No. 2,194,935.

⁶ Registration No. 2,173,548.

The Examining Attorney also made of record an application by a third-party for COCOON BASICS, with the word BASICS disclaimed. According to our check of the Office records, this application has not proceeded to registration and, indeed, a final refusal issued in May 2000. We are not aware of any case law which

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After carefully reviewing all of the evidence submitted by the Examining Attorney, we find that she has failed to demonstrate that the word BASICS, in the trademark PREFERRED BASICS, is merely descriptive of "home furnishings, namely, pillows, decorator pillows, chair pads and laundry hampers; window coverings, namely, toppers, shades, blinds and curtain rods." The references to Home Basics in the Chambers catalog, and to Country Basics in the Internet site appear to be trademark or service mark usage; certainly we cannot conclude from these references that BASICS is a merely descriptive term for applicant's goods. In fact, the COUNTRY BASICS website does not even list any of the goods identified in this application. The listing for "Basic Bedding" in the "under construction" Strouds website may indicate that "basic bedding" describes a category for certain home furnishings, although we would be reluctant to make such a finding based only on this piece of evidence. Given that this website also similarly lists "fashion bedding" as a topic or category, it is not clear to us to what "basic bedding" refers. More importantly, there is a difference between the terms "basic

states that third-party applications can demonstrate Office disclaimer practice. Accordingly, we do not consider this application to have any probative value.

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bedding" and "basics," as used in the mark PREFERRED BASICS. Therefore, even if we were to conclude that the items pictured and listed on this printout--a comforter and baffled fiberbed, a magnetic pillow enhancer, down comforters, a baffled box featherbed and a mattress pad--were basic bedding, some thought is still required to go from this conclusion to a recognition that these items are BASICS. (As an aside, we also point out that none of the goods pictured and listed on the printout coincide with any of the goods identified in applicant's application.)

Similarly, although "basics" may be defined as "an essential, fundamental element or entity, we think that a consumer would have to exercise a degree of thought to associate this term with, for example, a laundry hamper, first making a determination that such an item was essential "in furnishing one's bathroom," Examiner's brief, p. 5, and then realizing that "basics" means an essential element, and from that concluding that BASICS describes the laundry hamper.

Based on the evidence of record, we find that BASICS, in the mark PREFERRED BASICS, does not immediately convey information to purchasers about a characteristic or quality of applicant's pillows, laundry hampers, window coverings, etc., but instead consumers would have to exercise some

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thought or imagination to reach an association between the word and the goods. The need to exercise imagination, thought or perception is, of course, the hallmark of a suggestive mark.

In reaching our conclusion we have also considered the two third-party registrations submitted by the Examining Attorney in which the word BASICS (in BULLDOG BASICS) and the words BASIC BODY in BASIC BODY PLUS have been disclaimed. These registrations do not illustrate any pattern by the U.S. Patent and Trademark Office of treating marks similar to applicant's as containing a merely descriptive term. For example, the registration for BODY BASIC PLUS involves the word BASIC, not BASICS, with BASIC clearly modifying BODY. As for BULLDOG BASICS, the registration covers so many different kinds of items in different classes that we cannot determine from it what items BASICS was determined to be descriptive of, or even why a disclaimer was either required or offered. In this connection, it is noted that an applicant may offer a disclaimer of even registrable material.

On the other hand, applicant has submitted numerous third-party registrations for BASICS marks in which no disclaimer was required, including NATURE'S BASICS for

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pillows;⁷ SLEEP BASICS for pillows;⁸ COMFORT BASICS for pillows;⁹ and BALI BASICS for window blinds.¹⁰ Of particular interest is a registration for BASICS per se for pillows,¹¹ registered without recourse to Section 2(f), where the Examining Attorney obviously believed that BASICS is inherently distinctive for such goods. Obviously, the Board is not bound by the decisions of Examining Attorneys in other applications, but at the very least these registrations raise doubt about whether the word BASICS is viewed as being merely descriptive of goods similar or identical to applicant's.

As we noted in setting forth the general principles governing the determination of whether a mark is merely descriptive or suggestive, there is but a thin line of distinction between the two. In this case, we find that applicant's mark for its identified goods falls on the suggestive side of that line.

Application Serial No. 75/367,274

The goods identified in this application are "bathroom scales." In support of the requirement for a disclaimer,

⁷ Registration NO. 2,188,996.

⁸ Registration No. 2,183,453.

⁹ Registration No. 2,167,277.

¹⁰ Registration No. 1,296,356.

¹¹ Registration No. 1,941,427.

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the Examining Attorney has made of record the dictionary definition, an excerpt from the Chambers catalog referring to Hotel Basics, third-party registrations for BULLDOG BASICS and BASIC BODY PLUS, and a third-party application for COCOON BASICS discussed above. The Examining Attorney has also submitted the following excerpt from an article taken from the NEXIS database:

Basic serving pieces, and general gifts such as sterling photo frames and crystal bowls and vases, have become elegant staples.

Basic housewares items, such as coffee makers, a bread machines (sic), bathroom scales and kitchen tools continue to make the grade with brides outfitting their first home, or just looking to upgrade what she already has.

"HFN The Weekly Newspaper for the Home Furnishing Network", April 20, 1998

We have already discussed much of this evidence at length, and see no need to repeat why we find it unpersuasive. We would, in addition, point out that, in connection with the Hotel Basics catalog excerpt, there is no reference to bathroom scales, nor are bathroom scales listed in the third-party registrations and application.

We have also considered the excerpt from the article in "HFN The Weekly Newspaper for the Home Furnishing Network," a publication which appears from its name to be a

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trade paper. It is not clear to us that all kitchen tools, as well as bread machines, would be viewed as basic housewares items, as this article indicates. We also note that applicant has submitted a third-party registration for HOME BASICS for, inter alia, electric coffee makers, electric can openers, electric mixers, electric knives, and electric food processors.¹² The word BASICS was not required to be disclaimed in this registration; in fact, it is the word HOME that is disclaimed. (The newspaper article, of course, refers to coffee makers and tools as basic household items.)

In any event, we are not persuaded from this single reference to bathroom scales as "basic housewares items" that consumers will, upon seeing PREFERRED BASICS for bathroom scales, immediately understand that BASICS describes a quality of the scales.

After reviewing all the evidence of record we cannot accept the Examining Attorney's position that "'BASICS' immediately identifies the applicant's goods as 'the starting point or basis' of, in this instance, bathroom furnishing--i.e. bathroom scales." Brief, p. 4. By the very nature of the product, a bathroom scale would, of

¹² Registration No. 2,151,280.

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course, be used in a bathroom, but it can hardly be considered a "starting point" for bathroom furnishings.

Again, we find that BASICS in the mark PREFERRED BASICS for bathroom scales falls on the suggestive side of the merely descriptive/suggestive line.

Application Serial No. 75/367,251

This application identifies the goods as "bath products, namely, drinking glasses, soap dishes, tooth brush holders, waste baskets, toilet brushes, and tissue box holders."

In support of her requirement for a disclaimer of BASICS, the Examining Attorney has made of record a dictionary definition for "basics"; the Hotel Basics excerpt from the Chambers catalog; and the third-party registrations for BULLDOG BASICS and BODY BASIC PLUS and the third-party application for COCOON BASICS, all of which have been discussed in connection with Application Serial No. 75/367,250. Again, we find this evidence to be unpersuasive, and point out that the Hotel Basics catalog listing makes no mention of any of the goods identified in this application, nor does the registration for BULLDOG BASICS or the application for COCOON BASICS. The registration for BASIC BODY PLUS does include soap dishes and dispensers, but the disclaimer of BASIC BODY in that

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registration, as well as the different manner in which BASIC is used in BASIC BODY PLUS as compared with PREFERRED BASICS, does not support the view that BASICS should be disclaimed in the present case.

The Examining Attorney has also made of record the following excerpt from an article,¹³ entitled "Plan College Move to Avoid Many Hassles," taken from the NEXIS database:

..Find out what cleaning materials and equipment are provided.

Find out if items such as curtains and shower curtains are included.

Don't forget such basic items as waste baskets, brooms and laundry supplies.
"The Times-Picayune," August 14, 1997

Finally, the Examining Attorney has made of record a print-out from an Internet website for giftbasketexpress entitled "Bathroom Basics Gift Basket" which states "This gift basket will make a great gift for anyone" and which includes towels, and a "ceramic soapdish" and a "ceramic toothbrush holder."

The NEXIS article indicates that purchasers may view a waste basket as a basic item; however, we still believe

¹³ The Examining Attorney submitted two additional articles, but these are both from Canadian newspapers and there is no evidence of any exposure of such newspapers, or the articles contained therein, to U.S. consumers. Therefore, we have not considered them in making our determination.

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that some thought is required to go from 1) the definition of "basics" as essential, fundamental elements to 2) the concept that a waste basket is a basic or fundamental item to 3) a conclusion that BASICS, in the mark PREFERRED BASICS, is being used to refer to a waste basket or any of the other identified items. Thus, as used in the mark, BASICS does not immediately convey this information.

As for the "Bathroom Basics Gift Basket" advertised in the Internet printout, we agree that "bathroom basics" is used in this advertisement as a merely descriptive term for such items as a soapdish and a toothbrush holder.

Countering this, however, is the evidence of third-party registrations of BASICS marks submitted by applicant in which a disclaimer of the word BASICS was not required. In particular, we note the registration for BATH BASICS for tumblers, soap dishes and toothbrush caddies. Even if we assume, arguendo, that "Basics" has a descriptive significance when used as part of the phrase "Bathroom Basics," it does not have the same significance when used in the mark PREFERRED BASICS. Even though the mark PREFERRED BASICS will be used in connection with such basic bathroom items as towels, soap dishes and toothbrush holders, some degree of thought or imagination is still necessary to connect the word BASICS, when used in the mark

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PREFERRED BASICS, to the goods. Although this Internet evidence is the most significant that the Examining Attorney has produced to show the descriptiveness of BASICS, we find it falls somewhat short of clearly demonstrating the merely descriptive nature of the term. Moreover, given the policy that we resolve doubts on the issue of descriptiveness in favor of the applicant, and recognizing the thin line of distinction between suggestive and merely descriptive marks, we do not believe it appropriate to find that BASICS is merely descriptive based on this very limited amount of evidence.

Application Serial No. 75/367,273

This application is for "domestic articles, namely, bed sheets, blankets, comforters, mattress pads, and mattress protective covers; bath products, namely, towels, shower curtains; kitchen textiles, namely, tablecloths, dish towels, dish cloths, placemats, pot holders, napkins; home furnishings namely, unfitted fabric furniture covers, in Class 24, and bath rugs and area rugs in Class 27.

In support of the requirement for a disclaimer of BASICS, the Examining Attorney has submitted evidence submitted in connection with the companion applications, including a dictionary definition of "basics"; the Hotel Basics excerpt from the Chambers catalog (which references

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sheets, duvets and towels); Internet evidence consisting of the Yahoo listing of site matches, the Country Basics website (which mentions throw blankets), the Strouds "under construction" website (which lists comforters and mattress pads), and the giftbasketexpress advertisement for "Bathroom Basics Gift Basket" (which includes towels);¹⁴ and the third-party registrations for BULLDOG BASICS (this registration includes beach towels) and BASIC BODY PLUS (this registration does not include any of the specific items identified in applicant's application) and the third-party application for COCOON BASICS (this application includes silk bed sheets, silk quilts filled with silk, bath towels, textile bath mats, textile table cloths and textile napkins). We have already discussed this evidence, and will not burden this opinion by repeating those comments.

The Examining Attorney has also submitted a number of excerpts of articles taken from the NEXIS database. Some of these articles are from foreign publications; some use

¹⁴ Although no objection was raised in connection with the other applications under appeal, in its main brief in this case applicant states that the citation of web pages was improper because the Examining Attorney did not disclose her search strategy. This objection is not well taken. The materials obtained from the Internet do, in fact, show the web addresses for them.

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the term "basic" or "basics" in manners which are clearly different from the descriptive meaning the Examining Attorney alleges, for example, with the connotations of "standard" or "inexpensive." Some of the references are ambiguous, and we are simply unable to ascertain from the excerpts the connotation which "basic" or "basics" is intended to convey.¹⁵ We do not consider any of these articles as probative of the merely descriptive meaning of "basics" for the involved goods.¹⁶

¹⁵ For example, an excerpt from the April 14, 1997 issue of "HFN, The Weekly Newspaper of the Home Furnishing Network," states that the "...smaller hotels, motels, colleges and other similar groups regularly contact me to ask the retail places they can buy basic textiles like sheets and towels. They are not big enough to be served by the larger mills and that's made plain to them when they attempt a purchase." "Basic," as used in this excerpt, may as easily refer to inexpensive textiles as to describing sheets and towels as essential items. Similarly, the following excerpt comes from the July 5, 1998 issue of "The San Diego Union-Tribune": "The companion Greenwich collection mixes country florals and traditional plaids. To complement these and other seasonal offerings, Hilfiger has his 'essentials,' basic towels and linens in mixable jewel-toned solids and stripes." In this excerpt, "basic" may as easily be read as meaning "plain" as "essential."

¹⁶ Although applicant made no objection with respect to the Examining Attorney's submission of NEXIS evidence in connection with the three other applications discussed in this opinion (aside from the objection to articles taken from foreign publications, see footnote 13), in its appeal brief for Application Serial No. 75/367,273 applicant notes that the 17 printouts taken from the NEXIS data base were selected from 119 search results, and points out that the Examining Attorney did not state whether the 17 printouts were representative of the 119 search results. Citing TMEP § 1106.07, applicant also makes the comment that the Examining Attorney did not indicate what research services were used or the number of documents she reviewed and that, if she reviewed all of the articles revealed

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The most relevant articles in showing such a meaning are the following:

...First Step had provided hundreds of families with free "starter kits" of housing basics such as beds, dressers, blankets and towels... "The Plain Dealer," November 1, 1998

The collection encompasses five color groups and will offer basics from kitchen towels to table cloths. "HFN, The Weekly Newspaper of the Home Furnishing Network," September 22, 1997

...Gale Asberry, who as a new homeowner in 1996 was in need of some "basic home necessities--you know, sheets, towels and maybe some kitchen gadgets..." "The Arizona Republic," January 7, 1998

Applicant, on the other hand, has submitted certain third-party registrations for marks containing the word BASICS in which no disclaimer of that term was required.

by her search and relied on these materials in making her refusal, she was required to send this material to applicant.

We note that the cover sheet to the NEXIS materials, which was sent to applicant as part of the March 31, 1999 Office action, indicates the search request, the library and file, and that 17 of 119 stories found were printed. These 17 story excerpts were also included with the Office action. Although the Examining Attorney did not specifically state the number of stories which were reviewed, or that the stories made of record were a representative sample of those reviewed, we do not regard these deficiencies as a fatal flaw which would result in our not considering the NEXIS evidence. Having said that, however, we note that of the 17 stories submitted out of 119 retrieved, only three are even arguably useful in showing a descriptive connotation for "basic" or "basics." We can certainly take into consideration the fact that such a minimal number of stories were found to support the Examining Attorney's position, since we can assume that the Examining Attorney has submitted the most persuasive evidence available.

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These include HOME BASICS for towels;¹⁷ and BEACH BASICS (stylized, BEACH disclaimed) for beach sheets and towels¹⁸

Having reviewed all of the evidence, we find that it is not sufficient to demonstrate that BASICS, as used in applicant's mark, is merely descriptive of its identified goods. Our view of the reference to sheets and towels as "basic home necessities" in the third NEXIS article is the same as our consideration of a similar NEXIS reference in connection with Application Serial No.75/367,251 ("such basic items as waste baskets"): a consumer would have to exercise thought to transition from a recognition of the definition of "basics" as essential elements to the view that sheets and towels are basic home necessities to a conclusion that BASICS, in the mark PREFERRED BASICS, refers to a quality or characteristic of sheets or towels. As for the Internet evidence regarding "Bathroom Basics Gift Basket," we recognize, as we stated in our discussion of Application Serial No. 75/367,251, that this evidence shows that BASICS has some connection with items such as towels. That connection is also demonstrated by the NEXIS excerpts referring to blankets and towels as "housing basics" and referring to kitchen towels and table cloths as

¹⁷ Registration No. 1,869,639.

¹⁸ Registration No. 1,842,994.

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"basics." However, as we have also stated previously, the significance of the word BASICS in applicant's mark PREFERRED BASICS is different from the significance of this word when it is part of the phrase "bathroom basics" or "housing basics" or is used alone.

Because of the recognition that there is a gray area in determining the descriptiveness of a mark, it is a well-established practice, where reasonable men may differ, to resolve doubt in the applicant's favor. See **In re The Gracious Lady Service, Inc.**, 175 USPQ 380 (TTAB 1972). We do so in this case with respect to the requirement for a disclaimer of BASICS in connection with the goods in Class 24. With respect to the goods in Class 27, as applicant has pointed out, none of the evidence references BASICS specifically in connection with such goods. Accordingly, we have no doubts with respect to the goods in this class; the evidence of record is simply insufficient to prove that BASICS is merely descriptive of such goods.

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Decision: The requirement for a disclaimer of the
word BASICS in Applications Serial Nos. 75/367,250;
75/367,274; 75/367,251 and 75/367,273 is reversed.

E. J. Seeherman

G. D. Hohein

D. E. Bucher
Administrative Trademark Judges
Trademark Trial and Appeal Board